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DEPARTMENT OF EDUCATION

34 CFR Chapter II

ED-2014-OESE-0134

Proposed Priorities, Requirements, Definitions, and
Selection Criteria--State Tribal Education Partnership
Program

[CFDA Number: 84.415A]

AGENCY: Office of Elementary and Secondary Education,
Department of Education.

ACTION: Proposed priorities, requirements, definitions,
and selection criteria.

SUMMARY: The Assistant Secretary for Elementary and
Secondary Education proposes priorities, requirements,
definitions, and selection criteria for the State Tribal
Education Partnership (STEP) program. The Assistant
Secretary may use one or more of these priorities,
requirements, definitions, and selection criteria for
competitions in fiscal year (FY) 2015 and later years. We
propose this action to enable tribal educational agencies
(TEAs) to administer formula grant programs under the
Elementary and Secondary Education Act of 1965 (ESEA), and
to improve the partnership between TEAs and the State

educational agencies (SEAs) and local educational agencies (LEAs) that educate students from the affected tribe.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to the site?"

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about these proposed regulations, address them to the person listed under FOR FURTHER INFORMATION CONTACT.

Privacy Note: The Department's policy is to make all comments received from members of the public available for

public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Shahla Ortega, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E211, Washington, DC 20202-6450. Telephone: (202) 453-5602 or by email: shahla.ortega@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, definition, or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, definitions, and selection criteria. Please

let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 3E211, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. If you want to schedule time to inspect comments, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purposes of Program: The purposes of this program are to:

- (1) promote increased collaboration between TEAs and the SEAs and LEAs that serve students from the relevant tribes,

in the administration of certain ESEA formula grant programs; and (2) build the capacity of TEAs to conduct certain administrative functions under those programs for eligible schools, as determined by the TEA, SEA, and LEA.

Program Authority: 20 U.S.C. 7451(a)(4).

Background:

The FY 2012 appropriation for the Department of Education (the Department) included funding for a pilot program under the Indian Education (ESEA title VII) National Activities authority. Under the pilot, the Department awarded competitive grants to four TEAs to increase collaboration between TEAs and SEAs in the administration of certain ESEA State-administered formula grant programs, build TEA capacity to conduct State administrative functions under those programs for eligible schools located on reservations, increase the role of TEAs in the education of their children, and improve the academic achievement of American Indian and Alaska Native students (see 77 FR 31592, May 29, 2012).

TEAs from a tribe with a reservation on which there was at least one public school were eligible to apply for the STEP pilot. Applicants were required to submit a preliminary agreement between the TEA and SEA that included a list of eligible participating schools and letters of

support from participating LEAs, as well as a description of the programs, functions, and capacity-building activities to be included in the project. We then required grantees to submit a final agreement providing additional detailed information within nine months after the start of the first grant period. The four grantees all submitted the final agreement and received continuation awards for the second year and will receive continuation awards for the final year of their grant awards.

For the STEP pilot competition, the Department waived notice-and-comment rulemaking because the competition was conducted under new program authority. Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, requirements, definitions, and selection criteria. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary of Education to exempt from rulemaking requirements, regulations governing the first grant competition under a new program authority, and the STEP pilot competition qualified for this exemption. For the STEP pilot competition, we used the selection criteria in the Education Department General Administrative Regulations (34 CFR 75.210).

Tribal Consultation: On January 29 and February 5, 2014, the Department solicited tribal input on the STEP program before starting the rulemaking process, pursuant to Executive Order 13175 ("Consultation and Coordination With Indian Tribal Governments"). Tribal members participated in person and by virtual media. A total of 89 tribal members participated, of whom 17 were tribal leaders.

We sought input concerning the type and scope of functions that TEAs should assume under the grant program. Some participants favored continuing the STEP program's focus on SEA-type activities while others supported a focus on LEA-type activities. Participants were generally interested in TEAs building capacity to provide a broader range of educational services for students than had initially been designed and implemented in the STEP pilot.

PROPOSED PRIORITIES: This notice contains two proposed priorities.

Background:

We would like to minimize any competitive disadvantage that newly created TEAs and TEAs with relatively little experience operating education programs may have compared to FY 2012 STEP grantees or established TEAs that have existing relationships with their LEAs or SEAs.

In order to create more opportunities for newly

established TEAs, we propose to establish separate priorities for established TEAs and TEAs with limited prior experience, to enable us to award grants to TEAs in each of these two categories. Because the purpose of the STEP grants is to build TEA capacity, we want to have the option of ensuring that grants do not go solely to TEAs with the most capacity and experience, and that less experienced TEAs are able to be competitive. On the other hand, we will ensure that when grants go to less experienced TEAs, that those grantees have the ability to carry out the grant, by using selection criteria designed to reward applicants with the requisite grant-management capacity and high-quality plan. We plan to make grants of four or five years' duration. We learned from the pilot grants that three years is not sufficient for full implementation of the grantees' plans. For any competition, we will announce the length of the grant period through a notice inviting applications published in the Federal Register.

Proposed Priority 1--Established TEAs.

To meet this priority, a TEA must be an established TEA.

Proposed Priority 2--TEAs with Limited Prior Experience.

To meet this priority, a TEA with limited prior

experience is, for any STEP competition, a TEA that has not received a previous STEP grant, and does not meet the definition of an "established TEA."

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the Federal Register. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

PROPOSED REQUIREMENTS

Background:

In administering the STEP pilot, we learned valuable lessons that inform our proposed changes to the STEP program.

Tribally Controlled Schools. During webinars with potential applicants and discussions with successful grantees, we learned that TEAs want the flexibility to include in their projects both public schools on their reservations and tribally controlled schools funded by the Bureau of Indian Education (BIE) of the U.S. Department of the Interior. Although we propose to provide that flexibility (see the discussion of the definition of “eligible school” under PROPOSED DEFINITIONS), we also propose, under Schools and Programs Included in Project, that projects must include at least one public school, in order to meet the original STEP program goal--enabling TEAs to gain experience in administering education programs in the public schools on their reservations. Applicants would be required to list the participating schools in the preliminary agreements that would be submitted with their applications. Some TEAs may currently play an important role in overseeing tribally controlled schools, which are tribal grant or contract schools funded by BIE. Therefore,

we would also require the preliminary agreements to include an explanation of how the STEP funds will be used to supplement activities currently conducted by the tribe.

For projects that would include one or more tribally controlled schools, we are proposing, under Schools and Programs Included in Project, that applicants be required to submit a copy of the application to BIE. This will allow the Department and BIE to consult as to whether the TEA will be required to enter into an agreement with BIE that details the respective responsibilities of each entity. We would require such an agreement if the TEA proposes to conduct SEA-type activities with respect to the tribally controlled schools. For example, if the TEA proposes to monitor the schools for compliance with a State-administered ESEA formula grant program, such as title I, part A (Improving Academic Achievement of the Disadvantaged) or title II, part A (Improving Teacher Quality State Grants), we would require an agreement with BIE because that activity is normally conducted by BIE in its role as SEA with respect to those Department programs.

Under the proposed requirements, a project that includes tribally controlled schools would not be required to enter into an agreement with BIE if the TEA proposes to assume only LEA-type functions with respect to BIE-funded

schools. Such LEA-type functions include direct implementation of a grant or staff professional development. However, for all projects that include one or more tribally controlled schools, the TEA applicant must submit a copy of the application to BIE, to enable the appropriate determination to be made. If an agreement with BIE is required, the grantee would submit that agreement to the Department at the same time as the final agreement. If a required agreement with BIE is not reached, the TEA can omit the tribally controlled schools from the STEP grant and include in its final agreement, to be submitted in year one of the grant period, only the public schools on which the SEA, LEA, and TEA have agreed. If that occurs, the grantee would be required to submit a revised budget, and depending on the circumstances, we may reduce the grant award. Nothing in these requirements would prevent any TEA from entering a voluntary agreement with BIE regarding issues such as data-sharing, and any agreement required by the STEP grant need not be limited in time or scope to the STEP activities.

Formula Grant Programs to be Included in STEP Projects. We also propose, based on feedback that we received, to expand the types of formula grant programs that can be included in STEP projects (see the discussion

of the definition of "ESEA formula grant program" under PROPOSED DEFINITIONS). However, we propose a requirement, described under Schools and Programs Included in Project, that projects that include the ESEA title VII Indian education formula grants (which are direct grants to LEAs) as a focus of the STEP grant also include at least one State-administered ESEA formula grant program, in keeping with the purpose of the STEP program.

LEA Commitment. We learned from administering the STEP pilot grants that, in order for projects to be successful, the cooperation of the LEA is essential, and a letter of support signed by the LEA, which was required as part of the STEP pilot application, is not always sufficient to ensure the LEA's cooperation. Thus we propose, under the preliminary and final agreement requirements, that in addition to the TEA and SEA, the LEA or LEAs be required to sign both these agreements as well. In addition, if the project is to include BIE-funded tribally controlled schools, those schools would also need to sign the preliminary and final agreements. These schools are usually direct recipients of ED formula grant funds through BIE, and their cooperation is essential to the success of a project that includes such schools.

Functions to be Performed by TEAs. During our

analysis of proposed project budgets for the STEP pilot, we learned that some TEAs are interested in conducting LEA-type activities rather than SEA-type activities, as well as accessing LEA-type student performance data on students who are tribal members. Therefore, under the preliminary agreement requirements, we propose to permit TEAs the flexibility to perform either SEA-type functions or LEA-type functions, under the chosen ESEA program, as agreed upon by the parties. The parties could also agree that the TEA will perform SEA-type functions for a certain program (e.g., title I) or for certain schools (e.g., a public school on the reservation), and LEA-type functions for another program (e.g., title VII) or for other schools (e.g., a tribally controlled school).

Student Data. In administering the STEP pilot grants, we learned that some TEAs are interested in obtaining data on tribal children attending public schools, and we received many questions concerning the privacy requirements of the Family Educational Rights and Privacy Act (FERPA) (section 444 of the General Education Provisions Act, 20 U.S.C. §1232g; 34 CFR part 99). FERPA generally prohibits the disclosure of personally identifiable information (PII) from a student's education records without the prior written consent of the student's parent. LEAs must comply

with that requirement before disclosing PII from students' education records to TEAs, unless an exception to the general consent requirement applies that would permit the disclosure. Likewise, SEAs are subject to the FERPA requirements concerning the re-disclosure of PII from students' education records that they received from LEAs and schools in the State. An exception to FERPA's general consent requirement permits LEAs or SEAs to designate an Indian tribe or TEA as its authorized representative to audit or evaluate Federal or State-supported education programs, under the conditions set forth in the Department's regulations. See 34 CFR 99.3, 99.31(a)(3), 99.35. In addition, SEAs and LEAs may share with TEAs any records that have been properly de-identified, in which all PII has been removed. See 34 CFR 99.3 and 99.31(b)(1). Applicants are encouraged to review information and guidance regarding FERPA on the Family Policy Compliance Office's Web site at: <http://www2.ed.gov/policy/gen/guid/fpc/index.html>. The proposed requirements for the preliminary agreement include a description of how the parties will comply with FERPA, if they propose that the TEA will have access to PII from student education records.

Final Agreement Requirements. We learned during the

first year of the STEP pilot that the requirements for developing a final agreement were too prescriptive and, in some cases, redundant. The final agreement is crucial to a STEP project's success, and if the TEA is unable to submit a final agreement by the Department-established deadline, it will not receive a continuation award under its grant. Therefore, we propose to streamline some of the elements for both the preliminary and final agreements to make them more practicable.

Proposed Requirements:

The Assistant Secretary for Elementary and Secondary Education proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Eligible Applicant: (a) A TEA that is from an eligible Indian tribe and authorized by its tribe to administer this program; or (b) a consortium of such TEAs.

Schools and Programs Included in Project:

(a) Schools. (1) Projects must include at least two eligible schools, at least one of which must be a public school.

(2) All schools included in the project must receive services or funds for the specific ESEA formula grant program(s) selected by the applicant.

(3) For projects that include one or more tribally controlled schools--

(i) The applicant TEA must include in its application evidence that it submitted a copy of the application to BIE; and

(ii) If the proposed project includes SEA-type functions with regard to the tribally controlled school, the TEA may be required to enter into an agreement with BIE, to be submitted to the Department at the same time as the final agreement.

(b) ESEA Formula Grant Programs. Projects must include at least one ESEA formula grant program that is State-administered.

Preliminary Agreement: An applicant must submit with its application for funding a signed preliminary agreement among the TEA, SEA, and LEA. Letters of support from an SEA or LEA will not meet this requirement and will not be accepted as a substitute.

The preliminary agreement must include:

(a) An explanation of how the parties will work collaboratively to administer selected ESEA formula grant programs in eligible schools;

(b) The primary ESEA formula grant program(s) for which the TEA will assume SEA-type or LEA-type administrative functions;

(c) A description of the primary SEA-type or LEA-type administrative functions that the TEA will assume;

(d) The training and other activities that the SEA or LEA, as appropriate, will provide for the TEA to gain the knowledge and skills needed to administer ESEA formula programs;

(e) The assistance that the TEA will provide to the SEA or LEA, as appropriate, to facilitate the project, such as cultural competence training;

(f) The names of at least one LEA and two or more eligible schools, at least one of which must be a public school, that are expected to participate in the project;

(g) An explanation of how the STEP funds will be used to build on existing activities or add new activities rather than replacing tribal or other funds;

(h) If the parties agree that the TEA will have access to PII from student education records, how the parties will comply with the requirements of section 444 of the General Education Provisions Act (commonly referred to as the Family Educational Rights and Privacy Act); and

(i) Signatures of the authorized representatives of

the TEA, SEA, participating LEA(s), and any BIE-funded tribally controlled school that is included in the project.

Final Agreement: Each grantee must submit to the Department a final agreement by the date, in year one of the grant, to be established by the Department in the notice inviting applications. The final agreement must contain:

- (a) All of the elements from the preliminary agreement, in final form;
- (b) A timetable for accomplishing each of the objectives and activities that the parties will undertake;
- (c) Goals of the project and measureable objectives towards reaching the goals; and
- (d) The actions that the parties will take to sustain the relationships established in the agreement after the project ends.

PROPOSED DEFINITIONS:

Background:

We learned from the STEP pilot competition that some TEAs were ineligible for a grant because, although tribal students attended a public school, that public school was not on the reservation. To enable more TEAs to be eligible, we propose to expand the definition of "eligible schools" from the definition used in the STEP pilot. Specifically,

we propose to permit the parties signing the preliminary agreement to include any public schools, either on, or off, the reservation. In making this decision, we expect that the TEA, SEA, and LEA will consider such factors as the proximity of the school to the reservation and the number of students from the TEA's tribe attending the school. Given the variety in the eligible applicants' circumstances and geographic areas, we do not believe that it would be helpful for the Department to prescribe the factors to use in determining what would be considered an eligible school. The parties must, however, agree on and identify in the preliminary agreement the schools to be included in the project. For schools that have students from multiple tribes, we would expect that a TEA planning a STEP application would first consult with the other relevant tribes.

We also learned from administering the STEP pilot grants that some TEAs want to coordinate better with the LEA to assist with tribal students' transfers between public schools and tribally operated schools, or to coordinate curricula and instructional practices among such schools. We propose expanding the definition of "eligible schools" to permit applicants to include in their projects not only public schools but also BIE-funded tribally

controlled schools. By including BIE-funded tribally controlled schools, the STEP grants can help TEAs to be better prepared to assist and monitor the tribe's students to help those students succeed academically and graduate from high school. The STEP project would be required to include only schools that receive funding under the selected ESEA programs, regardless of whether the schools are public or tribally controlled (see Requirements, Schools, and Programs Included in Project).

In addition, we learned from the STEP pilot that many TEAs are interested in administering the title VII Indian Education formula grants in the local public school or schools. These are ESEA formula grants that we make directly to LEAs. Therefore, to allow this flexibility, we are including in the definition of "ESEA formula grant program" the title VII Indian Education formula grant program. The LEA participating in the STEP project would remain the title VII grantee, just as currently the SEA remains the grantee for the State-administered programs, but the LEA and TEA could agree that the TEA will take on certain administrative functions for the title VII grant (such as planning policy and objectives and oversight of schools' compliance with requirements relating to the use of program funds).

The other definitions are generally the same as those that were used in the 2012 pilot program competition, with the exception of the new definition of "established TEA," which is explained under Proposed Priorities above.

PROPOSED DEFINITIONS:

The Assistant Secretary for Elementary and Secondary Education proposes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

Cultural competency means the use of culturally responsive education that takes into account a student's own cultural experiences, creates connections between home and school experiences, and uses the cultural knowledge, prior experiences, and learning styles of diverse students to make learning more appropriate and effective.

Eligible Indian tribe means a federally recognized or a State-recognized tribe.

Eligible school means a school that is included in the applicant's preliminary and final agreements, and that is:

(a) A public school, including a public charter school, or

(b) A BIE-funded tribally controlled school.

Established TEA means a TEA that previously received a STEP grant, or that meets one or more of the following

criteria, as specified by the Secretary in a notice inviting applications published in the Federal Register:

(a) Has an existing relationship with an SEA or LEA as evidenced by a written agreement between the TEA and SEA or LEA;

(b) Has an existing tribal education code;

(c) Has administered at least one education program (for example, a tribally operated preschool or afterschool program) within the past five years;

(d) Has administered at least one Federal, State, local, or private grant within the past five years.

Note: For each competition, the Secretary will publish in the Federal Register the minimum number of criteria from this list (such as three out of four), or the specific criteria from this list that an established TEA must meet.

ESEA formula grant program means one of the following programs authorized under the Elementary and Secondary Education Act of 1965, as amended (ESEA), for which States or LEAs receive formula funding:

(a) Improving Academic Achievement of the Disadvantaged ((title I, part A);

(b) School Improvement Grants (Section 1003(g));

(c) Migrant Education (title I, part C);

(d) Neglected and Delinquent State Grants (title I, part D);

(e) Improving Teacher Quality State Grants (title II, part A);

(f) English Learner Education State Grants (title III, part A);

(g) 21st Century Community Learning Centers (title IV, part B); and

(h) Indian Education Formula Grants (title VII, part A).

LEA-type function means the type of activities that LEAs typically conduct, such as direct provision of educational services to students, grant implementation, school district curriculum development and staff professional development pursuant to State guidelines, and data submissions.

SEA-type function means the type of activities that SEAs typically conduct, such as overall education policy development, supervision and monitoring of school districts, provision of technical assistance to districts, statewide curriculum development, collecting and analyzing performance data, and evaluating programs.

Tribal educational agency (TEA) means the agency, department, or instrumentality of an eligible Indian tribe

that is primarily responsible for supporting tribal students' elementary and secondary education, which may include early learning.

PROPOSED SELECTION CRITERIA:

Background:

The Department intends that the selection criteria used for competitions for STEP funds will ensure that STEP projects address the most critical needs of TEAs, SEAs, and LEAs in providing education for Indian youth.

The Department also expects that these selection criteria will help ensure that any projects that are funded under this program will be of high technical quality. Therefore, we are proposing specific factors that are unique to this program among the following selection criteria: need for project; quality of project design; adequacy of resources; and quality of project personnel. We believe that these proposed selection criteria would help us better select applications for funding and improve the STEP program.

Proposed Selection Criteria:

The Assistant Secretary for Elementary and Secondary Education proposes the following selection criteria for evaluating an application under this program. In any year in which this program is in effect, we may apply one or

more of these criteria or sub-criteria, any of the selection criteria in 34 CFR 75.210, or any combination of these. In the notice inviting applications or the application package or both, we will announce the maximum possible points assigned to each criterion.

(a) Need for project. The Assistant Secretary considers the extent to which the goals and objectives in the preliminary agreement, including the TEA capacity-building activities, address identified educational needs of the Indian students to be served.

(b) Quality of the project design. The Assistant Secretary considers one or more of the following factors:

(1) The extent to which the proposed project would recognize and support tribal sovereignty.

(2) The extent to which the preliminary agreement defines goals, objectives, and outcomes of the proposed project that are likely to be achieved by the end of the project period.

(3) The extent to which the proposed project would build relationships and better communication among the TEA, SEA, and LEA, as well as families and communities, to the benefit of Indian students in the selected schools, including by enhancing the cultural competency of SEA and LEA staff.

(4) The extent to which the proposed project would enhance the capacity of the TEA to administer ESEA formula grants during the grant period and beyond.

(c) Adequacy of resources. The Assistant Secretary considers the extent to which:

(1) The TEA has established, prior to developing the preliminary agreement, a relationship with either the SEA or an LEA that will enhance the likelihood of the project's success; and

(2) The use of STEP grant funds, as described in the proposed budget, supports the capacity-building activities that are needed to administer ESEA formula grants.

(d) Quality of project personnel. The Assistant Secretary considers the extent to which the proposed project director has experience in education and in administering Federal grants.

Final Priorities, Requirements, Definitions, and Selection Criteria:

We will announce the final priorities, requirements, definitions, and selection criteria in a notice in the Federal Register. We will determine the final priorities, requirements, definitions, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude

us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, requirements, definitions, or selection criteria, we will invite applications through a notice in the Federal Register.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise

interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the

extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed priorities, requirements, definitions, and selection criteria only on a

reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In assessing the potential costs and benefits--both quantitative and qualitative--of this proposed regulatory action, we have determined that the benefits of the proposed priorities, requirements, definitions, and selection criteria justify the costs. We believe that the proposed priorities, requirements, definitions, and selection criteria would not impose significant costs on

eligible TEAs that receive assistance through the STEP program. We also believe that the benefits of implementing the proposed priorities, requirements, definitions, and selection criteria outweigh any associated costs.

We believe that the costs imposed on applicants would be limited to costs associated with developing applications, including developing partnerships with SEAs and LEAs, and that the benefits of creating a partnership that is likely to be sustained after the end of the project period would outweigh any costs incurred by applicants. The costs of carrying out activities proposed in STEP applications would be paid for with program funds. Thus, the costs of implementation would not be a burden for any eligible applicants, including small entities. We also note that program participation is voluntary.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79, except that federally recognized Indian tribes are not subject to those rules. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

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